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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

PETER KENTEBE, individually and
on behalf of all others similarly situated,

Plaintiff

-against-

MIDLAND CREDIT
MANAGEMENT, INC.,

Defendant

Civil Case No.:

CIVIL ACTION

CLASS ACTION COMPLAINT
and
JURY TRIAL DEMAND

1 Plaintiff PETER KENTEBE (hereinafter, “Plaintiff”), a California resident,
2 brings this class action complaint by and through the undersigned attorneys, against
3 Defendant MIDLAND CREDIT MANAGEMENT, INC. (hereinafter “Defendant”
4 or “MCM”), for its violations of the Fair Debt Collection Practices Act 15 U.S.C.
5 §1692 (hereinafter “FDCPA”), and the Rosenthal Fair Debt Collection Practices
6 Act, California Civil Code §§ 1788 et seq. (hereinafter “RFDCPA”), individually
7 and on behalf of a class of all others similarly situated, pursuant to Rule 23 of the
8 Federal Rules of Civil Procedure, based upon information and belief of Plaintiff’s
9 counsel, except for allegations specifically pertaining to Plaintiff, which are based
10 upon Plaintiff’s personal knowledge.
11

12 **INTRODUCTION/PRELIMINARY STATEMENT**

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- 14
- 15 1. Congress enacted the FDCPA in 1977 in response to the “abundant evidence
16 of the use of abusive, deceptive, and unfair debt collection practices by many
17 debt collectors.” 15 U.S.C. § 1692(a). At that time, Congress was concerned
18 that “abusive debt collection practices contribute to the number of personal
19 bankruptcies, to material instability, to the loss of jobs, and to invasions of
20 individual privacy.” *Id.* Congress concluded that “existing laws . . . [we]re
21 inadequate to protect consumers,” and that “the effective collection of debts”
22 does not require “misrepresentation or other abusive debt collection
23 practices.” 15 U.S.C. §§ 1692(b) & (c).
24
- 25 2. Congress explained that the purpose of the Act was not only to eliminate
26 abusive debt collection practices, but also to “insure that those debt
27 collectors who refrain from using abusive debt collection practices are not
28 competitively disadvantaged.” *Id.* § 1692(e). After determining that the

1 existing consumer protection laws were inadequate, *id.* § 1692(b), Congress
2 gave consumers a private cause of action against debt collectors who fail to
3 comply with the Act. *Id.* § 1692k.

- 4
- 5 3. One of the purposes of the Rosenthal Fair Debt Collection Practices Act,
6 California Civil Code § 1788 is to similarly prohibit debt collectors from
7 engaging in unfair or deceptive acts or practices in the collection of
8 consumer debts.

9

10 **JURISDICTION AND VENUE**

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- 12 4. The Court has jurisdiction over this class action under 28 U.S.C. § 1331, 15
13 U.S.C. § 1692 *et seq.* and 28 U.S.C. § 2201. The Court also has pendent
14 jurisdiction over the state law claims in this action pursuant to 28 U.S.C. §
15 1367(a).
- 16 5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).
- 17

18 **NATURE OF THE ACTION**

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- 20 6. Plaintiff brings this class action on behalf of a class of California consumers
21 seeking redress for Defendant's actions of using false, deceptive and
22 misleading representation or means in connection with the collection of an
23 alleged debt.
- 24 7. Defendant's actions violated § 1692 *et seq.* of Title 15 of the United States
25 Code, commonly referred to as the Fair Debt Collections Practices Act
26 ("FDCPA"), which prohibits debt collectors from engaging in false,
27 deceptive or misleading practices.
- 28

1 8. Defendant's actions violated California Civil Code § 1788 et seq. of the
2 Rosenthal Fair Debt Collection Practices Act ("RFDCPA"), which prohibits
3 debt collectors from engaging in unfair or deceptive acts or practices in the
4 collection of consumer debts.

5 9. Plaintiff is seeking damages, and declaratory and injunctive relief.

6 **PARTIES**

7 10. Plaintiff is a natural person and a resident of California and is a "Consumer"
8 as defined by 15 U.S.C. §1692(a)(3).

9 11. Defendant MCM is a collection agency with its principal office located at
10 2365 Northside Drive, Suite 300, San Diego, California 92108.

11 12. Upon information and belief, Defendant is a company that uses the mail,
12 telephone, or facsimile in a business the principal purpose of which is the
13 collection of debts, or that regularly collects or attempts to collect debts
14 alleged to be due another.

15 13. Defendant is a "debt collector," as defined under the FDCPA under 15
16 U.S.C. § 1692a(6).

17 **ALLEGATIONS OF FACT**

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19
20 14. Plaintiff repeats, reiterates and incorporates the allegations contained in
21 paragraphs above herein with the same force and effect as if the same were
22 set forth at length herein.

23 15. Some time prior to June 14, 2017, an obligation was allegedly incurred to
24 Credit One Bank, N.A.

25 16. The alleged CREDIT ONE BANK, N.A. obligation arose out of a transaction
26 for medical services, a transaction in which money, property, insurance or
27 services, which are the subject of the transaction, are primarily for personal,
28 family or household purposes.

1 17.The alleged CREDIT ONE BANK, N.A. obligation is a "debt" as defined by
2 15 U.S.C. § 1692a(5).

3 18.CREDIT ONE BANK, N.A. is a "creditor" as defined by 15 U.S.C. §
4 1692a(4).

5 19.Defendant contends that the CREDIT ONE BANK, N.A. debt is past due.

6 20.Defendant is a company that uses mail, telephone or facsimile in a business
7 the principal purpose of which is the collection of debts, or that regularly
8 collects or attempts to collect debts incurred or alleged to have been incurred
9 for personal, family or household purposes on behalf of creditors.

10 21.CREDIT ONE BANK, N.A. directly or through an intermediary contracted
11 the Defendant to collect the alleged debt.

12 22.On or about June 14, 2017, the Defendant caused to be delivered to the
13 Plaintiff a collection letter in an attempt to collect the alleged CREDIT ONE
14 BANK, N.A. debt. *See Exhibit A.*

15 23.The June 14, 2017 letter was sent or caused to be sent by persons employed
16 by Defendant as a "debt collector" as defined by 15 U.S.C. §1692a(6).

17 24.The June 14, 2017 letter is a "communication" as defined by 15 U.S.C.
18 §1692a(2).

19 25.The Plaintiff received and read the Letter sometime after June 14, 2017.

20 26.The Letter stated in part:

21 **"Current Balance \$609.06"**

22 27.The Letter further stated:

23 **"The law limits how long a debt can appear on your credit report. Due to the age of**
24 **this debt, we will not report payment or non-payment of it to a credit bureau."**

25 28.Plaintiff read the above statement and believed, as would any
26 unsophisticated consumer, that this debt, or payments or non-payments
27
28

1 of it, cannot legally ever be reported to a credit bureau because of the
2 age of the debt.

3 29. Pursuant to the Fair Credit Reporting Act ("FCRA"), a collection account
4 can appear on a consumer's credit report for seven years from the date of
5 last activity. See 15 U.S.C. § 1681c of the FCRA.

6 30. Upon information and belief, Plaintiff's last activity pertaining to the
7 alleged debt was within the seven years.

8 31. Additionally, upon review of his credit report, Plaintiff saw that Midland
9 Credit Management was in fact continuing to report the alleged debt on his
10 credit report.

11 32. Defendant's statement was false, deceptive, and prohibited by the FDCPA.

12 33. By falsely advising the Plaintiff that the law prevents his account from
13 being credit reported, Defendant violated various provision of the FDCPA
14 and the RFDCPA.

15 34. Defendant could have taken the steps necessary to bring its actions
16 within compliance with the FDCPA, but neglected to do so and failed
17 to adequately review its actions to ensure compliance with the law.
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19
20
21 **CLASS ALLEGATIONS**

22 35. Plaintiff brings claims, pursuant to the Federal Rules of Civil Procedure
23 (hereinafter "FRCP") Rule 23, individually and on behalf of the following
24 consumer classes (the "Class") consisting of:

- 25 a. CLASS A: a) All consumers who have an address the state of
26 California b) who were sent a collection letter from the Defendant c)
27 attempting to collect a consumer debt d) which states "The law limits
28

1 how long a debt can appear on your credit report. Due to the age of
 2 this debt, we will not report payment or non-payment of it to a credit
 3 bureau.” (e) on a debt in which the law did not prohibit the reporting
 4 of payments or non-payments to a credit bureau (f) which letter was
 5 sent on or after a date one year prior to the filing of this action and on
 6 or before a date 21 days after the filing of this action.

7 b. CLASS B: a) All consumers who have an address the state of
 8 California b) who were sent a collection letter from the Defendant c)
 9 attempting to collect a consumer debt d) which states “The law limits
 10 how long a debt can appear on your credit report. Due to the age of
 11 this debt, we will not report payment or non-payment of it to a credit
 12 bureau.” (e) while Defendant was reporting the alleged debt (f) which
 13 letter was sent on or after a date one year prior to the filing of this
 14 action and on or before a date 21 days after the filing of this action.

15 36. The identities of all class members are readily ascertainable from the records
 16 of Defendants and those companies and entities on whose behalf they
 17 attempt to collect and/or have purchased debts.

18 37. Excluded from the Plaintiff Classes are the Defendants and all officers,
 19 members, partners, managers, directors, and employees of the Defendants
 20 and their respective immediate families, and legal counsel for all parties to
 21 this action and all members of their immediate families.

22 38. There are questions of law and fact common to the Plaintiff Classes, which
 23 common issues predominate over any issues involving only individual class
 24 members. The principal issue is whether the Defendants’ written
 25 communications to consumers, in the forms attached as *Exhibit A*, violate
 26 15 U.S.C. § 1692e.
 27

28 39. The Plaintiffs’ claims are typical of the class members, as all are based upon

1 the same facts and legal theories.

2 40. The Plaintiffs will fairly and adequately protect the interests of the Plaintiff
3 Classes defined in this complaint. The Plaintiffs have retained counsel with
4 experience in handling consumer lawsuits, complex legal issues, and class
5 actions, and neither the Plaintiffs nor their attorneys have any interests,
6 which might cause them not to vigorously pursue this action.

7 41. This action has been brought, and may properly be maintained, as a class
8 action pursuant to the provisions of Rule 23 of the Federal Rules of Civil
9 Procedure because there is a well-defined community interest in the
10 litigation:

- 11 (a) **Numerosity:** The Plaintiffs are informed and believe, and on that
12 basis allege, that the Plaintiff Classes defined above are so numerous
13 that joinder of all members would be impractical.
- 14 (b) **Common Questions Predominate:** Common questions of law and
15 fact exist as to all members of the Plaintiff Classes and those questions
16 predominate over any questions or issues involving only individual
17 class members. The principal issue is whether the Defendants' written
18 communications to consumers, in the forms attached as ***Exhibit A***,
19 violate 15 U.S.C. § 1692e.
- 20 (c) **Typicality:** The Plaintiffs' claims are typical of the claims of the class
21 members. The Plaintiffs and all members of the Plaintiff Classes have
22 claims arising out of the Defendants' common uniform course of
23 conduct complained of herein.
- 24 (d) **Adequacy:** The Plaintiffs will fairly and adequately protect the
25 interests of the class members insofar as Plaintiffs have no interests
26 that are averse to the absent class members. The Plaintiffs are
27 committed to vigorously litigating this matter. Plaintiffs have also
28

retained counsel experienced in handling consumer lawsuits, complex legal issues, and class actions. Neither the Plaintiffs nor their counsel have any interests which might cause them not to vigorously pursue the instant class action lawsuit.

- (e) **Superiority:** A class action is superior to the other available means for the fair and efficient adjudication of this controversy because individual joinder of all members would be impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum efficiently and without unnecessary duplication of effort and expense that individual actions would engender.

42. Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that the questions of law and fact common to members of the Plaintiff Classes predominate over any questions affecting an individual member, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

43. Depending on the outcome of further investigation and discovery, Plaintiffs may, at the time of class certification motion, seek to certify a class(es) only as to particular issues pursuant to Fed. R. Civ. P. 23(c)(4).

FIRST CAUSE OF ACTION

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. §1692e et seq.

44. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs above herein with the same force and effect as if the same were set forth at length herein.

45. Defendants' debt collection efforts attempted and/or directed towards the

1 Plaintiff violated various provisions of the FDCPA, including but not
2 limited to 15 U.S.C. § 1692e.

3 46. Pursuant to 15 U.S.C. § 1692e, a debt collector may not use any false,
4 misleading and/or deceptive means to collect or attempt to collect any
5 debt or to obtain information concerning a consumer.

6 47. The Defendants violated said section in its letter to the Plaintiff by:

- 7 a. Falsely representing the character, amount, and legal status of the
8 alleged debt in violation of 1692e(2);
9 b. Communicating credit information known to be false in violation
10 of 1692e(8);
11 c. Making a false representation or using deceptive means to collect
12 a debt in violation of 1692e(10).

13 48. By reason thereof, Defendant is liable to Plaintiff for judgment that
14 Defendant's conduct violated Section 1692e *et seq.* of the FDCPA, actual
15 damages, statutory damages, costs and attorneys' fees.
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17
18 **SECOND CAUSE OF ACTION**

19 **(Violations Of The Rosenthal Fair Debt Collection Practices Act)**

20 49. Plaintiff repeats, reiterates and incorporates the allegations contained in
21 paragraphs above herein with the same force and effect as if the same were
22 set forth at length herein.

23 50. Cal. Civ. Code §1788.17 mandates that every person or entity collecting or
24 attempting to collect a consumer debt shall comply with the provisions of
25 Sections 1692b to 1692j, inclusive, of, and shall be subject to the remedies
26 in Section 1692k of, Title 15 of the United States Code statutory regulations
27 contained within the FDCPA, 15 U.S.C. § 1692 *et seq.*
28

1 51.As set forth above, Defendant violated 15 U.S.C. § 1692e(2) and 15 U.S.C.
2 § 1692e(10) by falsely representing the legal status of a debt and using false
3 or deceptive means in connection with an attempt to collect a debt.

4 52.As such, Defendant violated the foregoing provisions of the FDCPA and
5 RFDCPA.

6 53.As a direct and proximate result of Defendant's violations of the RFDCPA
7 and FDCPA, Plaintiff was harmed, and may recover from Defendant one
8 thousand dollars (\$1,000.00) in statutory damages in addition to actual
9 damages and reasonable attorneys' fees and costs pursuant to Cal. Civ. Code
10 § 1788.30.
11

12
13 **DEMAND FOR TRIAL BY JURY**
14

15 54.Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff
16 hereby request a trial by jury on all issues so triable.
17

18 **PRAYER FOR RELIEF**
19

20 **WHEREFORE**, Plaintiff demands judgment against Defendants as follows:

- 21 (a) Declaring that this action is properly maintainable as a Class
22 Action and certifying Plaintiff as Class representative and the undersigned as
23 Class Counsel;
24 (b) Awarding Plaintiff and the Class statutory damages;
25 (c) Awarding Plaintiff and the Class actual damages;
26 (d) Awarding Plaintiff costs of this Action, including reasonable
27 attorneys' fees and expenses;
28

1 (e) Awarding pre-judgment interest and post-judgment interest;
2 and

3 (f) Awarding Plaintiff and the Class such other and further relief
4 as this Court may deem just and proper.
5

6 Dated: February 20, 2018
7

8 /s/ Jonathan A. Stieglitz
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